

### **REMARKS**

Claims 1-10 and 30-48 are pending in the present application. In the Office Action mailed February 28, 2006 the Examiner rejected claims 1-10 and 30-48 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner next rejected claims 1-10 and 30-48 under 35 U.S.C. §103(a) as being unpatentable over Ginter et al. (USP 6,427,140).

Regarding the alleged indefinite rejections the Examiner states that in claim 1 it is not clear what constituents direct sales processes nor what comprises current policy compliance. Examiner is reminded that claims need not teach, it is a Specification that teaches. The Examiner is referred to the Specification at page 3 (entire page), page 5 first full paragraph, page 5 last paragraph, page 6 first full paragraph, page 14 first full paragraph, page 15 first paragraph and accompanying drawings, page 23 second paragraph, page 23 third paragraph and the respective drawings, page 25 second paragraph with reference to Fig. 7, and page 36 last paragraph with reference to Fig. 15. Nevertheless, Applicant has deleted “current” from the claims.

Regarding claim 36 the Examiner states that it is not clear as to what constitutes applicable regulations. Again, the Examiner is referred to the Specification for a teaching. There is no ambiguity in the term “applicable regulations.” These are regulations that apply. The Examiner is referred to the paragraph bridging pages 1-2, page 5 bottom paragraph, page 6 bottom paragraph, page 13 first full paragraph, page 14 first paragraph with reference to Fig. 2, page 16 last paragraph still referring to Fig. 2, page 22 second paragraph, page 23 first paragraph with reference to Fig. 6, page 23 second paragraph, page 23 third paragraph, page 27 first paragraph, page 36 last paragraph, and paragraph bridging pages 36-37. Nevertheless, Applicant has replaced “applicable” with “regulatory”.

With regard to claim 40, the Examiner states that it is not clear as to what constitutes “prohibited transaction criteria.” Certainly one skilled in the art will readily recognize that such would constitute transaction criteria that is prohibited. The Examiner is referred to the Specification for teaching. For example, page 15 first paragraph, page

18 second paragraph, page 32 last paragraph, paragraph bridging page 33-34, and page 36 first paragraph.

With reference to claim 40, the Examiner states “it is not clear as to what constitutes such criteria” with respect to the act to “determine legal terms and conditions to associate with the medical device sales request.” The language is clear and simple. It clearly satisfies the requirements of 35 U.S.C. §112. In this case, the computer is programmed to determine the appropriate legal terms and conditions with the medical device sales requests as clearly set forth in the Specification. For example, the Examiner is referred to the paragraph bridging pages 1-2, page 3 first paragraph, page 3 second paragraph, page 4 second paragraph, page 4 third paragraph, page 5 first paragraph, page 6 first full paragraph, page 13 first full paragraph, page 15 last paragraph, page 16 first paragraph, page 18 second paragraph, page 18 third paragraph, page 19 third paragraph, page 19 fourth paragraph, page 21 second paragraph, etc. and accompanying drawings.

The Examiner next states “it appears the subject matter from independent claims 1 and 40 constitute divergent subject matter. Clarification is required.” However, since such is not a proper rejection under 35 U.S.C. §112, Applicant respectfully declines to make such clarification. Claims 1 and 40 are in fact drafted as “independent” claims. The Examiner’s comment is considered dicta since it is not in a proper form of a rejection.

The Examiner next rejects claims 1-10 and 30-48 under U.S.C. §103(a) as being unpatentable over a single reference, Ginter et al. (USP 6,427,140). However, nowhere in Figs. 1-87 and columns 1-321 does the reference disclose or suggest an electronic transaction system that includes reviewing existing direct sales screening processes to insure current policy compliance, creating new screening processes to minimize commercial risk in an electronic transaction, integrating the existing direct sales screening processes and new screening processes, determining and implementing legal terms and conditions for the electronic transactions, forming electronic media from the aforementioned steps and posting the electronic media on a global communications network.

The system of Ginter also does not include reducing end user risks by reducing transaction variation and by establishing a global registration process, setting electronic commerce guidelines for site design managers, determining status of contractual jurisdictional compliance, developing region specific legal checklists and training to ensure compliance, developing regional resource reference pools using e-mail, public folders, and other electronic tools to disseminate information, designing add-on modules to ensure an enhanced end user experience, drafting agreements with exclusions to exclusive relationships, integrating with Phase Review Discipline (PRD) systems, tracking all new electronic commerce generated offers, and tracking product/service offerings online through customer surveys.

Further, the system of Ginter does not include selling medical devices for use by licensed end user, selling only to authorized distributors, complying with international trade control regulations, ensuring all transactions comply with internal anti-money laundering policies, and ensuring all transactions comply with applicable jurisdictional law on data protection.

The system of Ginter also does not include considering impact of applicable regulations on electronic sales transactions, creating regulation compliance procedures, implementing regulation compliance procedures, integrating Order Through Remittance (OTR) processes with electronic order collection, developing customer credit worthiness procedures, ensuring customer credit worthiness procedures are implemented and followed, ensuring review of all electronic transactions by key project personnel, and collecting payment electronically for delivery of medical device.

The system of Ginter does not further include restricting sales in at least one product category to include: medical equipment and product/service information pertaining to medical equipment and services.

#### **Official Notice**

Even though the Examiner applied 321 columns of text and 87 figures, the Examiner still found it necessary to revert to Official Notice. The Examiner states that Official Notice is taken that direct screen processes are common knowledge in the transaction art, as are the recitations of the various dependent claims. However,

Applicant strongly disagrees and requests the Examiner provide a reference for each element the Examiner claims to be common knowledge in the transaction art.

The Examiner's application of Official Notice is inappropriate under the Manual Patent Examining Procedure (MPEP). "The Examiner may take Official Notice of facts outside of the record which are capable of instant and unquestionable demonstration as being 'well-known' in the art." MPEP §2144.03. However, MPEP §2144.03 is clear that "such rejections [relying on official notice] should be judiciously applied," be "rare," and be used "[i]n limited circumstances." Furthermore, "any facts so noticed should be of notorious character and serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection." MPEP §2144.03. Applicant does not believe that the Examiner's use of Official Notice is merely to "fill in the gaps." That is, the Examiner took Official Notice of an entire element of the claims, thereby effectively attempting to fill in apparent "holes" in the rejection rather than "gaps." The use of Official Notice is hereby traversed. The Examiner must "cite a reference in support of his or her position" should the Applicant traverse the assertion. MPEP § 2144.03. The reference cited by the Examiner, is inadequate for the Examiner's proposition.

"It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." MPEP § 2144.03 citing *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). It is insufficient to allege that the claimed elements (many unstated) are old and well established. Rather, the Examiner must establish that such *was* well known at the time of the invention (Nov, 2000) and within the context and use claimed. "The requirement 'at the time the invention was made' is to avoid impermissible hindsight." MPEP §2141.01. Applicant believes the Examiner's use of Official Notice in this regard is evidence of impermissible hindsight reconstruction.

Applicant traverses the Official Notice because the Examiner has provided no reasoning and no evidence to suggest such, and has not even articulated exactly what the Examiner is taking Official Notice of. It is wholly improper to just blanketly claim all of

the elements in the various dependent claims are common knowledge in the transaction art.

Ginter does not teach, disclose, or even suggest each and every element in the claims. Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-10 and 30-48.

Applicant hereby authorizes charging of deposit account no. 07-0845 for any additional fees associated with entering the aforementioned claims.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 07-0845. Should no proper payment be enclosed herewith, as by credit card authorization being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 07-0845. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extensions under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 07-0845. Please consider this a general authorization to charge any fee that is due in this case, if not otherwise timely paid, to Deposit Account No. 07-0845.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

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